March 1, 2001

D.T.E. 99-89-A

Petition of Cambridge Electric Light Company and Commonwealth Electric Company for approval of a Buydown of the Power Contract with Canal Electric Company for Power from Seabrook Unit Number 1.

ORDER ON MOTION FOR RECONSIDERATION AND

EXTENSION OF THE JUDICIAL APPEAL PERIOD BY THE ATTORNEY GENERAL

OF THE COMMONWEALTH OF MASSACHUSETTS

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FOR: CAMBRIDGE ELECTRIC LIGHT COMPANY and COMMONWEALTH ELECTRIC COMPANY

Petitioners

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Commenter

I. INTRODUCTION

On October 27, 1999, Cambridge Electric Light Company ("Cambridge") and Commonwealth Electric Company ("Commonwealth") (together, the "Companies" or "COM/Elec"), pursuant to G.L. c. 164, §§ 1A, 1G, 76, 94, and 94A, petitioned the Department of Telecommunications and Energy ("Department") for approval of a sixth amendment ("Sixth Amendment") to a Power Contract by and between Canal Electric Company ("Canal") and the Companies. The Sixth Amendment provided for the Companies' buydown of their embedded cost obligation to Canal with respect to purchases of electricity from Seabrook Unit No. 1 ("Seabrook").

The matter was docketed as D.T.E. 99-89. On January 18, 2000, after notice duly issued, the Attorney General of the Commonwealth ("Attorney General") filed comments on the Sixth Amendment. No other comments were filed.

On March 3, 2000, the Companies supplemented their October 27, 1999 filing. The Companies filed a Restated Sixth Amendment ("Buydown Agreement") that replaced and superceded the previously filed Sixth Amendment. On October 26, 2000, the Department approved the Buydown Agreement. Cambridge Electric Light Company and Commonwealth Electric Company, D.T.E. 99-89 (2000).

On November 26, 2000, the Attorney General filed (1) a Motion for Reconsideration and (2) a Motion for Extension of the Judicial Appeal Period. On December 5, 2000, the Companies filed their response to the Attorney General's motions.

II. THE ATTORNEY GENERAL'S MOTIONS

A. Motion for Reconsideration

1. The Attorney General

The Attorney General argues that the Department failed to provide notice that it would resolve, in this proceeding, the questions of whether the Companies' Seabrook obligations are to be treated as generation-related costs or as above-market purchased power costs

(Attorney General Motion for Reconsideration at 2). The Attorney General notes that the Department stated in Cambridge Electric Light Company/ Commonwealth Electric Company/Canal Electric Company, D.P.U./D.T.E. 97-111, at 62 (1998) that resolution of the treatment of Seabrook's investments would be resolved "in the first case reconciling actual transition costs to estimated transition costs" (id.).

The Attorney General argues that the Department failed to provide any opportunity for him to examine and present evidence on contested questions of fact (id. at 2). The Attorney General states that in D.T.E. 99-89, the Department did not resolve contested questions of fact concerning the reasonableness of the timing of the Companies' buydown proposal, and did not base its decision on facts (id. at 3). Instead, the Attorney General argues that the Department relied on claimed "concerns" of the Companies that were not supported by sworn testimony or tested by cross-examination (id.). The Attorney General states that the Companies' concerns over potential tax consequences formed the sole basis for the Department's rejection of the Attorney General's position that the Companies had unreasonably delayed mitigation of their Seabrook costs (id.). The Attorney General argues that the Companies' response to a Department information request on the proposed timing of the buydown did not address or resolve factual questions as to the availability of carry-backs, carry-forwards and other mechanisms designed to capture tax benefits (id. at 3-4). The Attorney General concludes that there are previously unknown facts that could have had a significant impact on the Department's decision (id. at 4).

2. The Companies

The Companies argue that the Attorney General had sufficient notice that Seabrook mitigation and the proper transition charge treatment of the Seabrook agreement were at issue in this case because these issues were included in the Companies' petition and the Department's Order of Notice ("Notice") in this case (Companies Reply at 2-3).[(1)] The Companies state that the Attorney General submitted comments to the Department that specifically referred to the issues in the Companies' petition and the Department's Notice. The Companies argue that the Department's numerous information requests also provided additional notice to the Attorney General of the issues in this case (id., citing Exhs. DTE-2-3; DTE-3-1; DTE-3-2; DTE-1-7; DTE-1-8; DTE-1-10; DTE 1-15). The Companies conclude that the Attorney General has failed to demonstrate any extraordinary circumstances concerning the notice in this case that would require reconsideration by the Department

(id. at 3-4).

The Companies argue that the Attorney General did not make any request,"timely, or untimely," for an evidentiary hearing in this case (id. at 4). The Companies state that even if the Attorney General had requested an evidentiary hearing, the Department would not be required to grant such a request (id., citing 220 C.M.R. § 1.06(1); Massachusetts Municipal Wholesale Electric Company, D.P.U. 96-45-D (1996)).

B. Motion for Extension of the Judicial Appeal Period

The Attorney General requests that the Department extend the judicial appeal period to twenty days following final Department action on his Motion for Reconsideration (Attorney General Motion for Extension of the Judicial Appeal Period at 1). The Attorney General argues that this time is necessary to fully preserve the Attorney General's rights to appeal while his motion for reconsideration was pending (id.).

III. STANDARD OF REVIEW

The Department's Procedural Rule, 220 C.M.R. § 1.11(10), authorizes a party to file a motion for reconsideration within twenty days of service of a final Department Order. The Department's policy on reconsideration is well settled. Reconsideration of previously decided issues is granted only when extraordinary circumstances dictate that we take a fresh look at the record for the express purpose of substantively modifying a decision reached after review and deliberation. North Attleboro Gas Company, D.P.U. 94-130-B at 2 (1995); Boston Edison Company, D.P.U. 90-270-A at 2-3 (1991); Western Massachusetts Electric Company,

D.P.U. 558-A at 2 (1987).

A motion for reconsideration should bring to light previously unknown or undisclosed facts that would have a significant impact upon the decision already rendered. It should not attempt to reargue issues considered and decided in the main case. Commonwealth Electric Company, D.P.U. 92-3C-1A at 3-6 (1995); Boston Edison Company, D.P.U. 90-270-A at 3 (1991); Boston Edison Company, D.P.U. 1350-A at 4 (1983). The Department has denied reconsideration when the request rests on an issue or updated information presented for the first time in the motion for reconsideration. Western Massachusetts Electric Company, D.P.U. 85-270-C at 18-20 (1987); but see Western Massachusetts Electric Company, D.P.U. 86-280-A at 16-18 (1987). Alternatively, a motion for reconsideration may be based on the argument that the Department's treatment of an issue was the result of mistake or inadvertence. Massachusetts Electric Company, D.P.U. 90-261-B at 7 (1991); New England Telephone and Telegraph Company, D.P.U. 86-33-J at 2 (1989); Boston Edison Company, D.P.U. 1350-A at 5 (1983).

IV. ANALYSIS AND FINDINGS

A. Motion for Reconsideration

1. Sufficiency of Notice

The Attorney General argues that the Department failed to provide notice in this proceeding that the Department would resolve the issue of whether the Companies' Seabrook obligations are to be treated as generation-related costs or as above-market purchased power costs. Both the Attorney General's comments (Attorney General Comments at 1-2) and the Notice referred to the Companies' request for approval of (1) an amendment to a power purchase agreement with Canal for electricity from Seabrook Unit No. 1; and (2) a proposal to include the recovery of the buydown amount as a

component of the Companies' transition charge. The Notice not only contemplated findings regarding the amount of the proposed buydown agreement, but also the treatment of the buydown costs as a component of the Companies' transition charge in this proceeding (see n.1, above).

On February 27, 1998, the Department stated that the resolution of the treatment of Seabrook investments, among other things, would be resolved in the first case reconciling actual transition costs to estimated transition costs. D.P.U./D.T.E. 97-111, at 61-62.

However, subsequent to D.P.U./D.T.E. 97-111, on October 30, 1998 and December 23, 1998 respectively, the Department approved the Companies' (1) divestiture of substantially all of their non-nuclear generation assets and (2) proposal to establish Energy Investment Services, Inc. ("EIS") for managing the proceeds of the divestiture. Cambridge Electric Light Company/Commonwealth Electric Company/Canal Electric Company/Eastern Edison Company/Montaup Electric Company. D.T.E. 98-78/83; D.T.E. 98-78/83-A (1998).[(2)]

The Department found that the "magnitude of the proceeds" that COM/Elec received from the sale of its generating units created "changed circumstances" that warranted the Department's use of its discretion to alter the Companies' application of the residual value credit ("RVC"). D.T.E. 98-78/83-A at 12-14. The Department determined that an alteration to the Companies' RVC was necessary because absent such an alteration, "significant damage could be done to the financial health of the Companies." Id. at 12. Simultaneously, based upon these "changed circumstances," the Department also allowed the Companies' proposal to establish EIS as a vehicle to manage COM/Elec's divestment proceeds. Id. at 13. The Department reasoned that administrative decisions, even if adjudicatory in the sense that they determine the rights and duties of specifically named persons, frequently have a regulatory component that may warrant reexamination in the light of changes in regulation, purpose, later decisional law, or applicable on-the-ground facts. Id. at 11, n. 10, citing Stowe v. Bologna, 32 Mass. App. Ct. 612, 616 (1992).

The "changed circumstances" found in D.T.E. 98-78/83-A are directly relevant to this proceeding. The Companies' proposal to use EIS funds in this proceeding to buy down the Seabrook Agreement resulted from the Department's Orders in D.T.E. 98-78/83 and

D.T.E. 98-78/83-A, approving the Companies' divestiture of their generation assets and creation of EIS. COM/Elec's use of EIS funds "appears to be exactly what the Department ordered the Companies to do" in D.T.E. 98-78/83-A. D.T.E. 99-89, at 11. Therefore, the Department had to address the treatment of Seabrook investments in this proceeding, rather than in the Companies' first reconciliation proceeding, D.T.E. 99-90,[(3)] because we could not resolve the Buydown Agreement without resolving the treatment of the buydown costs as a component of the Companies' transition charge.

Based on the above, the Department finds that the notice to this proceeding adequately delineated the scope of this proceeding. We also find that subsequent changes in circumstances following D.P.U./D.T.E. 97-111 warranted resolution of the treatment of

Seabrook investments in this proceeding. Accordingly, the Department denies the Attorney General's motion on this issue.

2. Adequacy of Evidentiary Record

The Attorney General argues that the Department did not resolve contested questions of fact concerning the reasonableness of the timing of the Companies' buydown proposal, and did not base its decision upon facts. Opinion concerning the sufficiency of the existing evidentiary record, or commentary addressing certain phrasing used by the Companies on the record, in no way constitutes a presentation of new factual material. The evidentiary record in D.T.E. 99-89 was extensive, consisting of twelve COM/Elec exhibits and 25 Department exhibits. In its investigation, the Department specifically considered, among other things, the reasonableness of the timing of the Buydown Agreement. D.T.E. 99-89, at 5, 10-11. The Attorney General presents no previously unknown or undisclosed facts or extraordinary circumstances that would dictate that the Department take a fresh look at the record for the express purpose of substantively modifying D.T.E. 99-89. We find that the Attorney General has not met the standard for reconsideration on this issue. Accordingly, for the reasons noted above, we deny the Attorney General's Motion for Reconsideration.

B. Motion for Extension of the Judicial Appeal Period

We now address the Attorney General's motion to extend the judicial appeal period. Upon motion filed with the Department within twenty days of a Department Order, the Department may grant a reasonable extension of the appeal period. G.L. c. 25, § 5;

220 C.M.R. § 1.11(11). The Attorney General filed his request for extension of the judicial appeal period at the end of the normal twenty-day deadline. The Department has well-established precedent that the filing of a motion for extension of the judicial appeal period automatically tolls the appeal period for the movant until the Department has ruled on the motion. Dispatch Communications of New England d/b/a Nexel Communications, Inc.,

D.P.U./D.T.E. 95-59-B/95-80/95-112/96-13, at 7 (1999) (Interlocutory Order on Appeal of Hearing Officer Ruling and Motions for Extensions of Appeal) (citations omitted). In this case, it would be difficult and burdensome to require the Attorney General to file his appeal the same day we issue this Order. Instead, we find it appropriate to allow the Attorney General ten days from the date of this Order in which to file a petition for appeal with the Secretary of the Department, should the Attorney General so choose.[(4)]

V. ORDER

Accordingly, after due notice, opportunity for public comment, and consideration, it is hereby

ORDERED: That the motion for reconsideration filed by the Attorney General of the Commonwealth be and hereby is DENIED; and it is

FURTHER ORDERED: That the motion for extension of the judicial appeal period filed by the Attorney General of the Commonwealth be and hereby is ALLOWED; and it is

FURTHER ORDERED: That the Attorney General shall have ten days following the issuance of this Order in which to file a petition for appeal with the Secretary of the Department.

By Order of the Department,

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James Connelly, Chairman

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W. Robert Keating, Commissioner

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Paul B. Vasington, Commissioner

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Eugene J. Sullivan, Jr., Commissioner

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Deirdre K. Manning, Commissioner

Appeal as to matters of law from any final decision, order or ruling of the Commission may be taken to the Supreme Judicial Court by an aggrieved party in interest by the filing of a written petition praying that the Order of the Commission be modified or set aside in whole or in part.

Such petition for appeal shall be filed with the Secretary of the Commission within twenty days after the date of service of the decision, order or ruling of the Commission, or within such further time as the Commission may allow upon request filed prior to the expiration of twenty days after the date of service of said decision, order or ruling. Within ten days after such petition has been filed, the appealing party shall enter the appeal in the Supreme Judicial Court sitting in Suffolk County by filing a copy thereof with the Clerk of said Court. (Sec. 5, Chapter 25, G.L. Ter. Ed., as most recently amended by Chapter 485 of the Acts of 1971).

1. The Notice stated in part that:

Commonwealth and Cambridge request that the Department find that: (1) the Buydown Agreement is in the public interest and will result in just and reasonable rates for the

Companies' retail customers, and is consistent with G.L. c. 164, §§ 1A, 76, 94 and 94A; (2) that the Companies have taken all reasonable steps to mitigate, to the maximum extent possible, the total amount of transition costs relating to Seabrook pursuant to G.L. c. 164, § 1G; (3) the buydown amount shall be included in, and recovered as part of, the Transition Charge, pursuant to G.L. c. 164, §§ 1A, 1G, 94 and 94A.

Cambridge Electric Light Company and Commonwealth Electric Company,

D.T.E. 99-89 (Notice of Filing and Request for Comment (December 13, 1999)).

2. We note that the Attorney General was a party to these proceedings.

3. We note that the Attorney General is a party in D.T.E. 99-90.

4. An appellant must file its appeal with the Supreme Judicial Court within ten days of filing its petition for appeal of an Order with the Department. G.L. c. 25, § 5.